HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 6753 M/S of 2001

Kedar Nath Singh and anothers.

VS

District Judge, Nainital and others.

Approved for reporting.

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~~Not approved~~ for reporting

Date of decision 1-10.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 6753 (MS) of 2001

Kedar Nath Singh and another. ..... Petitioner

VS

District Judge, Nainital and
Others. ..... Respondents

Counsel for the petitioners Sh. Sudhir Singh
Standing counsel for the respondents.

Dated:- 1-10-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Sudhir Singh learned counsel for the petitioners and Standing Counsel for the respondents.

By the impugned order the petitioners have been penalised under Order 21 Rule 32 of the Code of Civil Procedure for the civil imprisonment of 30 days.

Briefly stated the suit for injunction was filed by the plaintiff/respondent, which was decreed by the trail court and was confirmed by the Appellate Court.

The respondents thereafter instituted a suit in the year 1974-75 under section 229-B of the U.P. Zamindri Abolition Act and Land Reforms Act, which was dismissed on 25-5-1977and appeal against that judgment was also dismissed by the Commissioner in the year 1978.

The petitioners have submitted that he is in possession over the land in dispute and the plaintiff /respondents with a view to harass the petitioners an application was filed under Order 21Rule 32 of the Code of Civil Procedure for which objections were filed on behalf of the petitioners stating therein

that the name of Sh. Ramdass has already been expunged by the order of the S.D.M dt. 22-10-1970 and he being not in possession is not entitled for the relief under Order 21 Rule 32 of the Code of Civil Procedure. Relevant paragraphs 2 and 3 of the objection are quoted below:-

> " यह कि मदयुन फैकसिंह ने यू0पी0जे0ए0एल0आर के अन्तर्गत खेत नम्बर 121/2 पर संक्रमणीय भूमिधरी अधिकार प्राप्त कर लिये है तथा रामदास का नाम दिनांक 22.10.1970 को एस0डी0एम तराई रूद्रपुर के आदेष से खरिज हो चुका है क्योकि रामदास डिक्रदार कभी भी उक्त विवादित भूमि पर कब्जे में नही रहा है और कई वर्षो से बेखई में स्थाई रूप से चला आ रहा है। तथा मदयुन सिंह फैक सिंह ने उक्त भूमि पर कानूनी अधिकार प्राप्त कर लिये है।
>
> कि डिक्रीदार ने अपने हक लेने के लिये एस0डी0एम ताराई रूद्रपुर में दावा किया था जो खारिज हो चुका है तथा अपील भी कुमॉयु आयुक्त महोदय द्वारा दिनांक 16.10.1978 को खारिज का दी गई है तथा डिक्रीदार ने एक दावा कागजात माल मे से अपना नाम 22.10.1970 को खारिज हो जाने के बाद कागजात दुरूस्त किये जाने का किया था जो भी खारिज हो चुका है।"

On the application filed by the respondent No. 3, an order was passed without considering the aforesaid objections. The petitioners went in revision before the District Judge Nainital . The revisional court has recorded the finding that in a suit under Section 229-B of UZALR Act, the respondent No.3 has lost the case. The observations are quoted below:-

> *" In my opinion, the mere fact that the respondent No.1 failed to get a decree of declaration from the revenue*

court does not destroy the decree for permanent injunction obtained by him from the Civil Court against the revisionist.

The learned Counsel for the revisionist has also argued before me that in the Khatauni, the revisionist has been recorded to be a bhumidhar and that, therefore, the respondent No.1 had no locus stand to filed and maintain any application under order 21 Rule 32 of the C.P.C. In my opinion, this argument is devoid of force. The mere fact that the revisionist has been able to get an entry in his favour in the revenue records, the same can not go so far as to destroy the aforesaid decree for permanent injunction obtained by respondent No.1 from the Civil Court."

Order 21 Rule 32 of the Code of Civil Procedure provides as under:-

"Decree for specific performance for restitution of conjugal rights, or for an injunction:-

(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an

injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation , or with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule(1) or sub-rule (2) has remained in force for [six months] if the judgment –debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance [if any] to the judgment debtor on his application.

(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of [six months] from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract of for an injunction has not been obeyed, the Court may, in liew of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

As will appear from Order 21 Rule 32 of the Code of Civil Procedure the word " willful " has been used in the present case. Since the decree of the respondent No.3 having been frustrated by the subsequent event i.e the name of the respondent No.3 having been expunged from the revenue record on account of the dismissal of the revenue suit and further the circumstances have not been seen while passing the order under 21 Rule 32 of the Code of Civil Procedure. The word "*willful*" has been defined in the dictionary as under:-

"(1) Deliberate; intentional
(2) Headstrong, obstinate or self willed.

In view of the aforesaid facts and circumstances, it is not a fit case that the petitioner may be sentenced to civil imprisonment of 30 days as none of the courts below have recorded any findings as to whether the dis-obedience of the decree was "*willful*" . I find substance in the argument of the

petitioner, I therefore allow the writ petition and quash the order dt.27-4-1983.

Subject to the aforesaid observations, the writ petition is allowed. No order as to costs.

(RAJESH TANDON J.)

Dated:- 1-10-2004

M.K.